Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

CHARLES W. JANOSIK PETITIONER (PRO SE)

vs.

JESSE BROWN RESPONDENT
SECRETARY OF VETERANS AFFAIRS

PETITION FOR WRIT OF CERTIORARI
TO THE
U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHARLES W. JANOSIK
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Phone No.(518)287-1330

QUESTIONS PRESENTED

Does the U.S. Federal Court have jurisdiction over tort claims? Are there any provisions in the VA., section 7104(a) of title 38 of U.S.C., or the 38 U.S.C.A.&511(a), or any other U.S.C. that has jurisdiction over Intentional Tort Claims? Is there any court in the United States that will accept the petitioner's evidence of wrong doing? Does my claim for Intentional Tort fall within the statutory grant of any jurisdiction? Is my claim of Intentional Tort in violation of the 14th Amendment of the United States Constitution? Does the United States District Court have jurisdiction over tort claims against the VA see Verner V. United States, 804,F.Supp.381(D.D.C. 1992); see also Martin V. Principi, 3 Vet.App.553(1992).

What court in the United States has jurisdiction over my Intentional Tort Claim. The VA courts state they have no statutory provisions for deliberate intentional tort, and the Federal Court states as a matter of right or justice it was out of their jurisdiction, therefore is this a violation of my constitutional rights under the 14th amendment? As a veteran am I protected by the Intentional tort claims Act.

TABLE OF CONTENTS

QUESTIONS PRESENTED. 2

PETITION FOR WRIT OF CERTIORARI 3

OPINIONS 3

JURISDICTIONAL STATEMENT 4

CONSTITUTIONAL AND STATUTORY PROVISIONS 4

STATEMENT OF THE CASE 4-8

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 8

INDEX TO APPENDICES

APPENDIX A Opinion of Board of Veterans Appeals

APPENDIX B Judgment of the Court of Veterans' Appeals

APPENDIX C Judgment of the United States Court of Appeals for the Federal Circuit

APPENDIX D Amendment 14 to the United States Consitution

PETITION FOR WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner, Charles W. Janosik, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit refusing my right into their Court based on the jurisdictional scheme and construed in harmony with their Congressional mandate and may not even in the interest of justice extend their jurisdiction where none exists. What Court lies within the jurisdiction of my claim? The United States Court of Appeals for the Federal Circuit states the Court's review in appeals from the Court of Veterans Appeals is limited by it statutory grant of jurisdiction. Therefore, I seek redress of my claim under the Federal Tort Claims Act stemming from Navy, VA. Psychiatrist and VA. adminstration of conspiracy of deliberate misdiagnosis (Schizophrenia).

OPINIONS

The opinion of the Board of Veteran Appeals (91-41-487) reported as indicated in Appendix A to this petition. United States Court of Veterans Appeals (COVA 92-381) Janosik v. Brown appears in Appendix B. United States Court of Appeals for the Federal Circuit (93-7072) Janosik v. Brown appears in Appendix C.

JURISDICTIONS

Board of Veterans appeals opinion in this matter was filed on Feb. 25, 1992. 38 U.S.C.A. 7104(a);38 C.F.R.S.-9112 appears in Appendix A. A petition was filed to the United States Court of Veterans Appeals March 23, 1992. 38 U.S.C. &511A appears in Appendix B. The United States Court of Appeals for the Federal Circuit filed Feb. 2, 1993, states the Court was limited by its statutory grant of jurisdiction (38 U.S.C. & 7292)(1988), as stated in judgment October 12, 1993, appears in Appendix C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14 to the United States Constitution is set forth in Appendix D.

STATEMENT OF THE CASE

No opinion of the Federal Circuit Court was filed in this appeal. Inquiries to the Court's decision can not be honored as the deliberations of the panels of the panels of the court in particular appeals are not recorded.

This was a final judgment of the Federal Circuit Court. No further judicial review is available as a matter of right.

In a memorandum decision from the U.S. Court of Appeals, dated Nov. 4, 1993 stated Verner v. United

States F. Supp. 381(D.D.C.1992) (U.S. District Court has jurisdiction over tort claims against VA); see also Martin v. Principi, 3 vet.App.553(1992). Is the Federal Circuit in conflict with the Court of Veterans Appeals over jurisdiction of my appeal. I was not asking for VA benefits but was seeking and equivalent to the VA rating of disability and used this as a guide line. I understood clearly by the BVA and COVA that there was no statute of law in the VA for my claim of Intentional Tort and that my appeal was outside the VA system, leaving the petitioner nothing to contest.

The petitioner, Charles Janosik, during service September 1945 at Aiei Heights Hospital in Hawaii, the veteran was shackled by both feet and hands to a bed and injected with drugs simply because the veteran complained of severe headaches and the inability to sleep. During the time he was confined he was beaten several times. This treatment was continued for days until on the final injection the veteran became comatose. After the veteran regained consciousness he was no longer useful to these doctors and was within 3 days shipped back to the United States for separation

from the military. The Navy psychiatrist discharged me from the hospital and in their medical report stated I had a schizophrenic episode with a recommendation to the USMC that I be discharged from any further service. On January 1946 I was discharged from the USMC with honorable service requiring no medical or hospital treatment. The veteran was awarded a 60% disability for schizophrenia. In 1953 the VA dropped my disability to 10%.

In 1983 the VA wanted to remove the schizophrenia from the petitioner's records and informed the petitioner they no longer wished to compensate him for this mental disorder. During the 48 years they never asked the petitioner to undergo an examination that would have proved without a shadow of doubt that he never had this mental disorder of schizophrenia or any other mental disorder.

Because of what the Navy and VA did to the petitioner it prevented him from making a decent livlihood for he and his family. Since they denied the petitioner all of the G.I. Bill and

because the petitioner was forced to tell every possible employer when he applied for employment that he had this mental disorder of schizophrenia (which was a total lie). If the petitioner did not inform the employer the VA would do so. Because of this the petitioner was forced to go into his own business. This in itself proved both the Navy and VA the mental disorder they had labeled him was a deliberate misdiagnosis. No one with this mental disorder could operate such an enterprise the petitioner was in and make a success of it. The petitioner suffered both mental and physical anquish because of this treatment for 48 years.

While in the service a doctor or doctor's in the Navy are able to falsify a diagnosis so that research and experiments can be performed on a soldier without his or her consent. He could confine the soldier by shackling his hands and feet, give drugs, torture and beat leaving the persecuted individual to live with this the rest of his life and then later a cover-up by certain Depts.of the government that this occurred.

Therefore, as my claim stands today I have no rights as a veteran in the VA or a soldier in the military

to protect the individual from a doctor or doctor's and administrators of any deliberate wrong doing. Also, I have no rights in the court system of our country on this matter. I did not receive protection under the U.S. Constitution. All of the above because I was a soldier and later a veteran.

REASONS FOR GRANTING THE WRIT.

The Supreme Court should grant the petition of certiorari to clarify an erroneous application in cases where all available remedies have been exhausted.

CONCLUSION

For the reasons set forth above, a writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Federal Circuit.

Dated: January 12, 1994

Respectfully submitted,

Charles W. Janosik
Petitioner, Pro Se

Janosik V. DVA 91-41 487
COV 92-381
Federal Circuit Court - 93-7072

APPENDIX A

INTRODUCTION

This matter came before the Board on appeal from an October 1990 rating decision of the New York. N.Y. Regional Office (RO). The veterans notice of disagreement was received by the Dept.. of Veterans Affairs (VA) in November 1990. The Statement of t..e Case was issued in May 1991, and the veteran's substantive appeal was received in June 1991. The veteran testified before a section of the Board of Veterans' Appeals in Washington. D.C. in December 1991. The case is now ready for appellate review.

CONTENTIONS OF APPELLANT ON APPEAL

The veteran contended at his December 1991 personal hearing before the Board of Veterans' Appeals that Navy and VA physicians deliberately misdiagnosed his condition, calling it schizophrenia, which caused him great harm. The veteran believes that he should receive VA compensation as a result of this misdiagnosis.

DECISION OF THE BOARD

For the reasons and basis hereinafter set forth, it is the decision of the board that the veteran's claim is not within the Board's jurisdiction, and the appeal should, therefore, be dismissed.

FINDING OF FACT

The veteran alleges that the Navy and the VA commited and intentional tort that entitles him to VA compensation.

CONCLUSION OF LAW

The veterans claim is not within the jurisdiction of the Board of Veterans' Appeals. 38 U.S.C. & 7104(a) (formerly 38 U.S.C. & 4004(a); 38 C.F.R. & 19.112.

REASONS AND BASIS FOR FINDINGS AND CONCLUSIONS

The veteran made it very clear at this personal hearing before a section of the Board of Veterans' Appeals in December 1991 that he really wanted benefits to compensate for harm caused because Navy and VA phsyicians deliberately misdiagnosed his condition as schizophrenia beginning in service. This is, in effect, for intentional infliction of emotional distress, which comes under the Federal Tort Claims Act. This type of claim is outside the jurisdiction of the Board of Veterans' Appeals, since the Board's jurisdiction only extends to questions on claims involving benefits under the laws administered by the VA. 38U.S.C. & 7104(a);38 C.F.R. & 19.112(a).

BOARD OF VETERANS' APPEALS
Washington, D.C. 20420

DOCKET NO. 91-41 487 DATED: Feb. 25, 1992

THE ISSUE

Entitlement to VA compensation benefits due to the deliberate VA misdiagnosis of a psychiatric disorder that has resulted in subsequent harm to the veteran.

REPRESENTATION

Appellant represented by: The American Legion

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

J. W. Loeb, Counsel

ORDER

The veteran's appeal dismissed.

(NOTE: The section numbers of title 38, United States Code, were changed in 1991. The section numbers are given above, followed in parentheses, by "formerly &" and the old section numbers in effect prior to the 1991 revisions.)

BOARD OF VETERANS' APPEALS
Washington, D.C. 20420

C.W. Foulke, M.D. Richard B. Fra

Philip W. Wright

NOTICE OF APPELLATE RIGHTS: Under 38 U.S.C. & 7266 (1991) (formerly & 40.6), a decision of the Board of Veterans'

UNITED STATES COURT OF VETERANS APPEALS

No. 92-381

CHARLES W. JANOSIK, APPELLANT,

V.

JESSE BROWN,
Secretary of Veteran Affairs, Appellee.

Before NEBEKER, Chief Judge.

MEMORANDUM DECISION

NEBEKER, Chief Judge: Appellant, Charles Janosik appeals a February 25, 1992, Board of Veterans' Appeals (BVA decision which dismissed his claim for entitlement to Department of Veterans Affairs (VA) compensation benefits. Appellant pursues a claim for VA benefits in compensation for damages allegedly resulting from the deliberate VA misdiagnosis of a psychiatric disorder. The Secretary of Veterans Affairs (Secretary) filed a brief. The appellant filed an informal brief and a reply to the Secretary's brief. The Court affirms the BVA decision to dismiss his claim.

Appellant contends that he is entitled to a 100% schedular evaluation in compensation for damages which he suffered as a result of an intentional misdiagnosis of schizophrenia. He claims that the Navy and VA conspired to label him as a schizophrenic and that he

suffered lost wages and lost employment opportunities as a result of the misdiagnosis. The BVA, citing lack of jurisdiction to contemplate claims of Intentional Tort, dismissed appellant's claim.

Pursuant to section 7104(a) of title 38 of the United States Code, the BVA has jurisdiction to review all questions concerning VA benefits which are subject to a decision of the Secretary. See 38 U.S.C.A. § 511(a).A claim for compensation for an intentional tort is not a matter concerning VA benefits. Appellants claim lies outside laws concerning benefits administered by the VA and, consequently, lies outside the jurisdiction of the BVA. See Verner v. United States, 804 F.Supp. 381 (D.D.C. 1992) (U.S. District Court has jurisdiction over tort claims against VA); See also Martin v. Principi, 3 Vet. App.553(1992).

Upon consideration of the pleadings of the parties and the record on appeal, the Court holds that appellant has not demonstrated that the BVA committed either factual or legal error which would warrant reversal. Gilbert v. Derwinski, 1 Vet.App.49,53(1990; see also Anderson v. City of Bessemer City, 470 U.S. 564(1985); Danville Plywood Corp. v. United States, 899F.2d 3 (Fed. Cir.1990).

Summary affirmance is appropriate. Frankel v. Derwinski 1 Vet.Appl. 23 (1990).

Therefore, the decision of the BVA to dismiss appellant's claim for lack of jurisdiction is AFFIRMED.

DATED: Mar. 23, 1993.

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

93-7072
CHARLES W. JANOSIK,
Claimant-Appellant

v.

JESSE BROWN
SECRETARY OF VETERANS AFFAIRS
Respondent- Appellee

DECIDED: October 12, 1993

Before MICHEL, LOURIE, AND SCHALL, Circuit Judges.
PER CURIAM.

DECISION

Charles W. Janosik appeals from a judgment of the United States Court of Veterans Appeals affirming a decision by the Board of Veterans' Appeals dismissing for lack of jurisdiction his claim for Veteran's Compensation benefits, Janosik v. Brown , No. 92-381Ct.Vet.App. March 23, 1993). Because we do not have jurisdiction to hear Janosik's appeal, we dismiss.

DISCUSSION

On February 2, 1992, the Board dismissed Janosik's claim for entitlement to veteran's compensation benefits. Specifically, Janosik claimed entitlment to a 100% schedular evaluation in compensation for damages suffered.

as a result of an alledgedly intentional mis-diagnosis of a psychiatric disorder. Janosik asserts that 48 years ago the Navy and VA conspired to label him as schizophrenic, causing him to suffer lost wages, lost employment opportunities, and physical and emotional distress.

Janosik appealed the Board's decision to the Court of Veterans Appeals, which affirmed that Janosik's claim of intentional tort was not remediable under the veterans' benefits statutes and consequently was not within the jurisdiction of the Board. On appeal to this court, Janosik does not contest that conclusion. Rather, he complains that certain documents in his Counter Designation of the Record were not taken into consideration pursuant to Rule 10 of the Court of Veterans Appeals; Rules of practice and procedure. Also, Janosik alleges that appellee failed to comply with an order of the Court to supplement the record on appeal pursuant to Rule 11(b).

The scope of this court's review in appeals from the Court of Veterans Appeals is limited by its statutory grant of jurisdiction, 38 U.S.C.&7292 (1988). Livingston v. Derwinski, 959 F. 2d 224,225 (Fed. Cir.

1992). Specifically, we may only "review and decide any challenge to the validity of any statute or regulation of any interpretation thereof...and...interpret constitional and statutory provisions, to the extent presented and necessary to a decision (by Court of Veterans Appeals.)" 38 U.S.C.&729s. (Our jurisdictional scheme must be strictly construed in harmony with our congressional mandate, and we may not, even in the interest of justice, extend our jurisdiction were none exist." Livingston, 989F.2d at 225.

Claims that the Court of Veterans Appeals failed to take into consideration certain documents or that the Appellee failed to comply with a court order do not challenge the validity of any statute or regulation or interpretation thereof, nor do they require interpretation of constitutional or statutory provisions. Thus, Janosik's claims do not fall within our statutory grant of jurisdiction, and we are precluded by law from hearing Janosik's appeal. Accordingly, we dismiss.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

93-7072

CHARLES W. JANOSIK,

Claimant-Appellant,

v.

JESSE BROWN
Secretary of Veterans Affairs,

Respondent-Appellee.

JUDGMENT

ON APPEAL FROM THE UNITED STATES COURT OF VETERANS APPEALS

in CASE No.(s). 92-381

This CAUSE HAVING been heard and considered, it is

ORDERED AND ADJUDGED:

DISMISSED

ENTERED BY ORDER OF THE COURT

DATED: Oct. 12, 1993 Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: November 2, 1993

APPENDIX D

AMENDMENT 14TH TO THE UNITED STATES CONSTITUTION

A tort is an act that violates your private or personal rights. A tort injures you physically, attacks your reputation without justification. It takes away your liberty and freedom of action without just cause. It is intentional inteference with your personal rights. You have a right to freedom from deliberate misuse of the laws of the courts. Inteference with your reputation, freedom from unwarranted, untruthful attacks on your character. Malicious abuse of process using legal process to harrass someone. Inteference with your person, you have a right to be free from bodily injury. You have a right to be free from suffering or distress from more mental than physical or a combination of both. You have a right to be free of a mental inteference with your right, the touching of the mind, not the body. Damages for mental upset and for physical illness that may result. Inteference with your peace of mind. Freedom from fear of apprehension, intentionally inflicting mental suffering. Inteference with your privacy, giving objectional publicity to private information about you.